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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80865; File No. SR-NYSEArca-2017-48)

June 6, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Shares of the Franklin Liberty Intermediate Municipal Opportunities ETF and Franklin Liberty Municipal Bond ETF under NYSE Arca Equities Rule 8.600

I. Introduction

On May 8, 2017, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the Franklin Liberty Intermediate Municipal Opportunities ETF and Franklin Liberty Municipal Bond ETF (each, a “Fund” and collectively, the “Funds”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on May 3, 2017.<sup>3</sup> On May 8, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission has not received any comments on the proposed rule

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 80541 (April 27, 2017), 82 FR 20656 (“Notice”).

<sup>4</sup> In Amendment No. 1, which amended and replaced the proposed rule change in its entirety, the Exchange, among other things, clarified that: (i) the Franklin Liberty Municipal Bond ETF will only buy Municipal Securities (defined below) rated, at the time of purchase, in one of the top four ratings categories by one or more U.S. nationally recognized rating services (or comparable unrated or short-term rated securities); (ii) the Franklin Liberty Municipal Bond ETF may not buy defaulted or distressed Municipal Securities (which limitation will be applied at the time of purchase, and the Fund is not required to sell a Municipal Security that has defaulted or become distressed if the Adviser believes it is advantageous to continue holding the security); (iii) the Franklin Liberty Municipal Bond ETF may not buy high-yield or lower-rated debt securities (which limitation generally will be applied at the time of purchase and a downgrade of a

change. The Commission is approving the proposed rule change, as modified by Amendment No. 1 thereto.

## II. The Exchange's Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Funds under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Franklin Templeton ETF Trust ("Trust"), which is registered with the Commission as an open-end management investment company.<sup>5</sup> Each Fund is a series of the Trust. The investment adviser to each Fund will be Franklin Advisers, Inc. ("Adviser").<sup>6</sup>

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particular security below one of the top four ratings categories will not automatically cause the Fund to sell the security); (iv) the components of a Fund's portfolio with a minimum original principal amount outstanding of \$100 million or more may in the aggregate account for less than 75% of the weight of a Fund's portfolio; and (v) trading will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which trading may be halted. Amendment No. 1 also made non-substantive, technical amendments. Because Amendment No. 1 makes only clarifying and technical changes, and does not present unique or novel regulatory issues, it is not subject to notice and comment. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2017-48/nysearca201748-1745331-151464.pdf>.

<sup>5</sup> According to the Exchange, on March 23, 2017, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the Investment Company Act of 1940 ("1940 Act") relating to the Funds (File Nos. 333-208873 and 811-23124) ("Registration Statement"). In addition, according to the Exchange, the Commission has issued an order granting certain exemptive relief to the Trust, Franklin Advisers, Inc., and Franklin Templeton Distributors, Inc. under the 1940 Act. See Investment Company Act Release No. 30350 (January 15, 2013) (File No. 812-14042).

<sup>6</sup> The Exchange represents that the Adviser is not a registered broker-dealer but is affiliated with a broker-dealer. The Exchange represents that the Adviser has implemented and will maintain a "fire wall" with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to each Fund's portfolio. In addition, in the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, the applicable adviser or sub-adviser will implement and maintain a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund's portfolio, and will be subject to procedures

Franklin Templeton Distributors, Inc. will serve as the distributor, Franklin Templeton Services, LLC will serve as the administrator, and State Street Bank and Trust Company will serve as the sub-administrator, custodian, and transfer agent for each Fund.

The Exchange has made the following representations and statements in describing the Funds and their investment strategies, including each Fund's portfolio holdings and investment restrictions.<sup>7</sup>

A. Exchange's Description of the Funds' Principal Investments

1. Franklin Liberty Intermediate Municipal Opportunities ETF

According to the Exchange, the investment objective of the Franklin Liberty Intermediate Municipal Opportunities ETF will be to achieve a high level of current income that is exempt from federal income taxes. Under normal market conditions,<sup>8</sup> the Fund will invest at least 80% of its net assets in municipal securities whose interest is free from federal income taxes, including the federal alternative minimum tax.

The Fund may invest in municipal securities rated in any rating category by U.S. nationally recognized rating services (or comparable unrated or short-term rated securities), including below investment grade and defaulted securities and securities of issuers that are, or are about to be, involved in reorganizations, financial restructurings, or bankruptcy (generally

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designed to prevent the use and dissemination of material non-public information regarding such portfolio.

<sup>7</sup> The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, creation and redemption procedures, calculation of net asset value ("NAV"), fees, distributions, and taxes, among other things, is included in the proposed rule change, as modified by Amendment No. 1, and the Registration Statement, as applicable. See Amendment No. 1 and Registration Statement, supra notes 4 and 5, respectively.

<sup>8</sup> The term "normal market conditions" is defined in NYSE Arca Equities Rule 8.600 (c)(5).

referred to as “distressed debt”). Such investments typically involve the purchase of lower-rated or defaulted debt securities, comparable unrated debt securities, or other indebtedness (or participations in the indebtedness) of such issuers. Although the Adviser will search for investments across a large number of municipal securities that finance different types of projects, from time to time, based on economic conditions, the Fund may have significant positions in municipal securities that finance similar types of projects.

The Funds may invest in one or more of the following municipal securities (collectively, “Municipal Securities”):

- general obligation bonds, which are typically issued by states, counties, cities, towns and regional districts and backed by the issuer's pledge of its full faith, credit and taxing power for the payment of principal and interest;
- revenue bonds, which are generally backed by the net revenue derived from a particular facility, group of facilities, or, in some cases, the proceeds of a special excise tax or other specific revenue source;
- anticipation notes, including bond, revenue and tax anticipation notes, which are issued to provide interim financing of various municipal needs in anticipation of the receipt of other sources of money for repayment of the notes;
- insured Municipal Securities, which are covered by insurance policies that guarantee the timely payment of principal and interest;<sup>9</sup>

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<sup>9</sup> When beneficial, a Fund may purchase insurance for an uninsured bond directly from a qualified municipal bond insurer, in which case a Fund pays the insurance premium directly to the insurance company.

- municipal lease obligations, which generally are issued to support a government's infrastructure by financing or refinancing equipment or property acquisitions or the construction, expansion or rehabilitation of public facilities;<sup>10</sup>
- Municipal Securities that are issued on a when-issued or delayed delivery basis;
- variable and floating rate securities, including variable rate demand notes, municipal inflation protected securities, index-based floating rate securities, and auction rate securities, which have interest rates that change either at specific intervals from daily up to semi-annually, or whenever a benchmark rate changes;
- pre-refunded bonds, which are outstanding debt securities that are not immediately callable (redeemable) by the issuer but have been "pre-refunded" by the issuer;
- zero coupon bonds (including convertible and step coupon bonds) and deferred interest securities;
- stripped securities, which are debt securities that have been transformed from a principal amount with periodic interest coupons into a series of zero coupon bonds, each with a different maturity date corresponding to one of the payment dates for interest coupon payments or the redemption date for the principal amount;

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<sup>10</sup> A Fund may also gain exposure to municipal lease obligations through certificates of participation, which represent a proportionate interest in the payments under a specified lease or leases.

- mandatory tender (mandatory put) Municipal Securities, which may be sold with a requirement that a holder of a security surrender the security to the issuer or its agent for cash at a date prior to the stated maturity;
- callable securities, which give the issuer the right to redeem the security on a given date or dates (known as the call dates) prior to maturity;
- tax-exempt commercial paper, which typically represents an unsecured short-term obligation (270 days or less) issued by a municipality; and
- tax-exempt or qualified private activity and industrial development revenue bonds, which are typically issued by or on behalf of public authorities to finance various privately operated facilities which are expected to benefit the municipality and its residents, such as business, manufacturing, housing, sports and pollution control, as well as public facilities such as airports, mass transit systems, ports and parking.

## 2. Franklin Liberty Municipal Bond ETF

According to the Exchange, the investment objective of the Franklin Liberty Municipal Bond ETF will be to achieve a high level of current income that is exempt from federal income taxes. Under normal market conditions, the Fund will invest at least 80% of its net assets in Municipal Securities (as described above) whose interest is free from federal income taxes, including the federal alternative minimum tax.

Although the Adviser will search for investments across a large number of Municipal Securities that finance different types of projects, from time to time, based on economic conditions, the Fund may have significant positions in Municipal Securities that finance similar types of projects.

The Fund may invest in one or more of the Municipal Securities listed above. The Fund will only buy Municipal Securities rated, at the time of purchase, in one of the top four ratings categories by one or more U.S. nationally recognized rating services (or comparable unrated or short-term rated securities).<sup>11</sup> The Fund may not buy defaulted or distressed Municipal Securities.<sup>12</sup>

B. Exchange's Description of the Funds' Other Investments

According to the Exchange, while each Fund, under normal market conditions, will invest at least 80% of its net assets in Municipal Securities whose interest is free from federal income taxes, including the federal alternative minimum tax, each Fund may invest up to 20% of its net assets in the securities that pay interest that may be subject to the federal alternative minimum tax and, although not anticipated, in securities that pay taxable interest, as described below. With respect to up to 20% of its net assets, each Fund may invest in bank obligations;<sup>13</sup>

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<sup>11</sup> This limitation generally is applied at the time of purchase and a downgrade of a particular security below one of the top four ratings categories will not automatically cause the Fund to sell the security. The Adviser will, however, take such downgrade into account when analyzing the portfolio.

<sup>12</sup> This limitation generally will be applied at the time of purchase and the Fund is not required to sell a Municipal Security that has defaulted or become distressed if the Adviser believes it is advantageous to continue holding the security.

<sup>13</sup> Bank obligations include fixed, floating or variable rate certificates of deposit (CDs), letters of credit, time and savings deposits, bank notes and bankers' acceptances. CDs are negotiable certificates issued against funds deposited in a commercial bank for a definite period of time and earning a specified return. Time deposits are non-negotiable deposits that are held in a banking institution for a specified period of time at a stated interest rate. Savings deposits are deposits that do not have a specified maturity and may be withdrawn by the depositor at any time. Bankers' acceptances are negotiable drafts or bills of exchange normally drawn by an importer or exporter to pay for specific merchandise.

taxable commercial paper;<sup>14</sup> other investment companies,<sup>15</sup> including exchange-traded funds (“ETFs”);<sup>16</sup> U.S. government securities;<sup>17</sup> and unrated debt securities.<sup>18</sup>

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<sup>14</sup> Commercial paper is an unsecured, short-term loan to a corporation, typically for financing accounts receivable and inventory with maturities of up to 270 days. Each Fund may invest in taxable commercial paper only for temporary defensive purposes.

<sup>15</sup> Each Fund may invest in other investment companies to the extent permitted by the 1940 Act, Commission rules thereunder and exemptions thereto. Each Fund may also invest its cash balances in affiliated money market funds to the extent permitted by its investment policies and rules and exemptions granted under the 1940 Act.

<sup>16</sup> The ETFs in which a Fund may invest include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). Such ETFs all will be listed and traded in the U.S. on registered exchanges.

<sup>17</sup> U.S. government securities include obligations of, or guaranteed by, the U.S. federal government, its agencies, instrumentalities or sponsored enterprises. Some U.S. government securities are supported by the full faith and credit of the U.S. government. These include U.S. Treasury obligations and securities issued by the Government National Mortgage Association (GNMA). A second category of U.S. government securities are those supported by the right of the agency, instrumentality or sponsored enterprise to borrow from the U.S. government to meet its obligations. These include securities issued by Federal Home Loan Banks. A third category of U.S. government securities are those supported by only the credit of the issuing agency, instrumentality or sponsored enterprise. These include securities issued by the Federal National Mortgage Association (FNMA) and Federal Home Loan Mortgage Corporation (FHLMC).

<sup>18</sup> Debt securities or their issuers which are not rated by rating agencies, sometimes due to the size of or manner of the securities offering, the decision by one or more rating agencies not to rate certain securities or issuers as a matter of policy, or the unwillingness or inability of the issuer to provide the prerequisite information and fees to the rating agencies.



The Franklin Liberty Intermediate Municipal Opportunities ETF may also invest in defaulted debt securities<sup>19</sup> and high-yield debt securities.<sup>20</sup>

A Fund may invest up to 100% of its assets in temporary defensive investments, including cash, cash equivalents or other high quality short-term investments, such as short-term debt instruments, including U.S. government securities, high grade commercial paper, repurchase agreements, negotiable certificates of deposit, non-negotiable fixed time deposits, bankers acceptances, and other money market equivalents. In addition, with respect to each of the Funds, on a temporary basis, during periods of high cash inflows or outflows,<sup>21</sup> a Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, a Fund may not be able to achieve its investment objective. To the extent allowed by exemptions from and rules under the 1940 Act and a Fund's other investment policies and restrictions, the Adviser also may invest a Fund's assets in shares of one or more money market funds managed by the Adviser or its affiliates.

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<sup>19</sup> Investments in securities of issuers that are, or are about to be, involved in reorganizations, financial restructurings, or bankruptcy (generally referred to as “distressed debt”) typically involve the purchase of lower-rated or defaulted debt securities, comparable unrated debt securities, or other indebtedness of such issuers. The Franklin Liberty Municipal Bond ETF may not buy defaulted or distressed debt securities. However, the Franklin Liberty Municipal Bond ETF is not required to sell a debt security that has defaulted or become distressed if the Adviser believes it is advantageous to continue holding the security.

<sup>20</sup> High-yield or lower-rated debt securities are securities that have been rated by Moody’s or S&P below their top four rating categories (e.g., BB or Ba and lower) and are considered below investment grade. The Franklin Liberty Municipal Bond ETF may not buy high-yield or lower-rated debt securities. This limitation generally is applied at the time of purchase and a downgrade of a particular security below one of the top four ratings categories will not automatically cause the Franklin Liberty Municipal Bond ETF to sell the security. The Adviser will, however, take such downgrade into account when analyzing the portfolio.

<sup>21</sup> “Periods of high cash inflows or outflows,” as used herein, mean rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of a Fund’s net assets as of the opening of business on the first day of such periods.

C. Exchange's Description of the Funds' Investment Restrictions

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Each Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

A Fund will not necessarily focus its investments in a particular state, and will not invest more than 15% of its total assets in Municipal Securities of any one state. Under normal market conditions, except for periods of high cash inflows or outflows, each Fund will satisfy the following criteria: (i) each Fund will have a minimum of 35 Municipal Securities holdings; (ii) after a Fund has at least \$100 million in assets, it will have a minimum of 75 Municipal Securities holdings; (iii) with respect to 75% of each Fund's total assets, no single Municipal Securities issuer will account for more than 3% of the weight of a Fund's portfolio; for the remaining portion of each Fund's assets, no single Municipal Securities issuer will account for more than 6% of the weight of a Fund's portfolio; (iv) each Fund will limit its investments in Municipal Securities of any one state to 15% of a Fund's total assets and will be diversified among issuers in at least 10 states; and (v) each Fund will limit its investments in Municipal

Securities in any single sector to 25% of a Fund's total assets.<sup>22</sup> The Exchange states that pre-refunded bonds will be excluded from the above limits given that they have a high level of credit quality and liquidity.<sup>23</sup>

D. Exchange's Description of the Application of Generic Listing Requirements to the Funds

The Exchange states that it is submitting this proposed rule change because the portfolios for the Funds will not meet all of the "generic" listing requirements of Commentary .01 to NYSE Arca Equities Rule 8.600 applicable to the listing of Managed Fund Shares. The Exchange states that each Fund's portfolio will meet all the requirements set forth in Commentary .01 to NYSE Arca Equities Rule 8.600 except for those set forth in Commentary .01(b)(1), which requires that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$100 million or more.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a

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<sup>22</sup> A Fund's investments in Municipal Securities will include investments in state and local (e.g., county, city, town) Municipal Securities relating to such sectors as the following: dedicated tax; public power; tax increment; toll road; port revenue; airport revenue; water revenue; sewer revenue; higher education (colleges and universities); wastewater revenue; school districts; and sales tax revenue.

<sup>23</sup> Pre-refunded bonds (also known as refunded or escrow-secured bonds) have a high level of credit quality and liquidity because the issuer "pre-refunds" the bond by setting aside in advance all or a portion of the amount to be paid to the bondholders when the bond is called. Generally, an issuer uses the proceeds from a new bond issue to buy high grade, interest bearing debt securities, including direct obligations of the U.S. government, which are then deposited in an irrevocable escrow account held by a trustee bank to secure all future payments of principal and interest on the pre-refunded bonds.

national securities exchange.<sup>24</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>25</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>26</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last sale information for the Shares and for ETFs will be available via the Consolidated Tape Association ("CTA") high-speed line, and from the national securities exchange on which they are listed.<sup>27</sup>

The Indicative Optimized Portfolio Value ("IOPV") of the Shares (which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3)) will be widely disseminated every 15 seconds during the Exchange's Core Trading Session (normally 9:30 a.m. to 4:00 p.m., Eastern Time) by one or more major market data vendors or other information providers.<sup>28</sup> On each business day, before commencement of trading in Shares in the Core

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<sup>24</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>27</sup> Amendment No. 1 at 19.

<sup>28</sup> The Exchange represents that several major market data vendors display and/or make widely available IOPVs taken from CTA or other data feeds. According to the Exchange, the IOPV will be based on the current market value of a Fund's portfolio holdings that

Trading Session on the Exchange (ordinarily 9:30 a.m., Eastern Time), each Fund's website will disclose the Disclosed Portfolio<sup>29</sup> that will form the basis for a Fund's calculation of NAV at the end of the business day.<sup>30</sup> In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for a Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the National Securities Clearing Corporation. The basket represents one creation unit of a Fund. The NAV of Shares of a Fund will normally be determined as of the close of the Core Trading Session on the Exchange (ordinarily 4:00 p.m. Eastern Time) on each business day. Authorized participants may refer to the basket composition file for information regarding securities and financial instruments that may comprise a Fund's basket on a given day.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation information from brokers and dealers or pricing services will be available for Municipal Securities, unrated debt securities, defaulted debt securities, high yield debt securities,

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will form the basis for the Fund's calculation of NAV at the end of the Business Day, as disclosed on the Fund's website prior to that Business Day's commencement of trading. According to the Exchange, the IOPV will generally be determined by using both current market quotations and/or price quotations obtained from broker-dealers that may trade in the portfolio securities held by a Fund.

<sup>29</sup> The term "Disclosed Portfolio" is defined in NYSE Arca Equities Rule 8.600(c)(2).

<sup>30</sup> On a daily basis, the Funds will disclose the information required under NYSE Arca Equities Rule 8.600(c)(2) to the extent applicable. The website information will be publicly available at no charge.

and cash equivalents or other high quality short-term investments, including U.S. government securities, bank obligations, and taxable commercial paper. Price information for money market funds and other investment companies will be available from the applicable investment company's website and from market data vendors. Pricing information regarding each other asset class in which a Fund will invest will be available generally through nationally recognized data service providers through subscription agreements.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share for each Fund will be calculated daily and that the NAV and the Disclosed Portfolio for each Fund will be made available to all market participants at the same time. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.<sup>31</sup> Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which Shares of the Funds may be halted.

The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. In addition, Commentary .06 to NYSE Arca Equities Rule 8.600 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. The

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<sup>31</sup> The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.

Exchange represents that the Adviser is not a registered broker-dealer but is affiliated with a broker-dealer, and that the Adviser has implemented and will maintain a “fire wall” with respect to that broker-dealer affiliate regarding access to information concerning the composition of, and/or changes to, each Fund’s portfolio.

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>32</sup> The Commission believes that the Exchange’s initial and continued listing requirements, combined with the Fund’s investment criteria that would apply to Municipal Securities in the portfolio, are designed to mitigate the potential for price manipulation of the Shares.

The Exchange represents that it deems the Shares to be equity securities, thus rendering the trading of the Shares subject to the Exchange’s existing rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following additional representations:

- (1) The Shares of each Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

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<sup>32</sup> The Exchange states that FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA’s performance under this regulatory services agreement.

- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) Trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. These surveillances generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.
- (4) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and ETFs with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and ETFs from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and ETFs from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain



fixed income securities held by a Fund reported to FINRA's Trade Reporting and Compliance Engine. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

- (5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss (a) the procedures for purchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (d) how information regarding the IOPV and the Disclosed Portfolio is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., Eastern Time each trading day.

- (6) For initial and continued listing, the Funds must be in compliance with Rule 10A-3 under the Act.<sup>33</sup>
- (7) Under normal market conditions, each Fund will invest at least 80% of net assets in municipal securities whose interest is free from federal income taxes, including the federal alternative minimum tax.
- (8) The Franklin Liberty Municipal Bond ETF will only buy municipal securities rated, at the time of purchase, in one of the top four rating categories by one or more U.S. nationally recognized rating services (or comparable unrated or short-term rated securities), and the Fund may not buy defaulted or distressed municipal securities.
- (9) The ETFs in which the Funds may invest will be listed and traded in the U.S. on registered exchanges.
- (10) Each Fund's portfolio will meet all the requirements set forth in Commentary .01 to NYSE Arca Equities Rule 8.600 except for those set forth in Commentary .01(b)(1).
- (11) Under normal market conditions, except for periods of high cash inflows or outflows, each Fund will satisfy the following criteria: (i) each Fund will have a minimum of 35 Municipal Securities holdings; (ii) after a Fund has at least \$100 million in assets, it will have a minimum of 75 Municipal Securities holdings; (iii) with respect to 75% of each Fund's total assets, no single Municipal Securities issuer will account for more than 3% of the weight of a Fund's portfolio; for the remaining portion of each Fund's assets, no single Municipal Securities issuer

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<sup>33</sup> See 17 CFR 240.10A-3.

will account for more than 6% of the weight of a Fund's portfolio; (iv) each Fund will limit its investments in Municipal Securities of any one state to 15% of a Fund's total assets and will be diversified among issuers in at least 10 states; and (v) each Fund will limit its investments in Municipal Securities in any single sector to 25% of a Fund's total assets.

- (12) Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.
- (13) Each Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

The Exchange also represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) applicability of Exchange listing rules specified in the filing shall constitute continued listing requirements for listing the Shares of a Fund on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.<sup>34</sup> If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>35</sup> and the rules and regulations thereunder applicable to a national securities exchange.

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<sup>34</sup> The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR-BATS-2015-100). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

<sup>35</sup> 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>36</sup> that the proposed rule change (SR-NYSEArca-2017-48), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

Brent J. Fields  
Secretary

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<sup>36</sup> 15 U.S.C. 78s(b)(2)

<sup>37</sup> 17 CFR 200.30-3(a)(12).

